St. Luke's Episcopal-Presbyterian Hospitals, Inc. ***and*** **Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 108**

St. Luke's Episcopal-Presbyterian Hospitals, Inc. ***and*** **Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, Local 161.** Cases 14–CA–25025, 14–CA–25142, and 14–RC–11921

July 13, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On May 7, 1999, Administrative Law Judge George Aleman issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief to the Respondent's exceptions, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

1. The judge found, inter alia, that the Respondent violated Section 8(a)(1) of the Act by creating the impression of surveillance of employee Carol Hollowood's protected activity. We disagree.

On March 19, 1998,[2] Hollowood was called into the office of the Respondent's patient care manager, Janet Gunn. Gunn told Hollowood that Supervisor Patricia Geldbach reported to her that Hollowood had solicited petition signatures in the hospital's outpatient care area (in violation of the Respondent's policy). Hollowood denied soliciting in the outpatient area, but admitted to having solicited another nurse outside the hospital. Hollowood also stated her belief that it must have been fellow employee Debbie Buschol who reported her. Gunn responded by expressing her hope that Hollowood was not soliciting in the outpatient area, adding that it was against hospital policy and that Hollowood knew better. That was the end of the conversation.

Later that day, Hollowood confronted Geldbach about the report. Geldbach admitted to Hollowood that the entire matter had been a misunderstanding, explaining that although Buschol reported seeing Hollowood "getting petitions," she had not, in fact, reported that Hollowood solicited in the outpatient recovery area. At this point, the entire matter was dropped.

The judge found that Hollowood could reasonably believe from Gunn's remarks that the Respondent was keeping a watch on her union activities. In support, the judge noted that Gunn made this accusation without investigating the matter to ascertain whether it was true. In addition, according to the judge, Gunn's failure to acknowledge the validity Hollowood's belief that Buschold was responsible for the report could reasonably have led Hollowood to believe that the Respondent was utilizing certain employees to report on Hollowood's union activities.

Contrary to the judge, we find that Gunn's statements did not create the impression that Hollowood's union activities were under surveillance. Gunn's comments to Hollowood only communicated the Respondent's concern that Hollowood not solicit in patient care areas. Gunn made no comments about any of Hollowood's other union activities, even after Hollowood volunteered to her that she had solicited an employee outside of the facility. Further, once it became clear that there had been a misunderstanding about the location of Hollowood's solicitation, the matter was immediately dropped. In these circumstances, Gunn's comments reasonably conveyed nothing more than a misunderstanding about whether Hollowood had violated the Respondent's rule against solicitation in the outpatient care area. Indeed, to the extent there existed any confusion on Hollowood's part about Gunn's comments, that confusion was clearly laid to rest by Geldbach's statement later that day that the whole thing had been a misunderstanding.

We disagree with the judge that the impression of surveillance was created by Gunn making an accusation about Hollowood without investigating the report. The credited testimony establishes that Gunn was investigating the report by directly asking Hollowood if it was true. Gunn's statement, that he hoped Hollowood was not soliciting in the outpatient area, indicates that the Respondent had not reached any conclusion about the report. Finally, we disagree with the judge that by failing to confirm or deny that Buschold was the source of the report, Gunn reasonably suggested to Hollowood that the Respondent had employees watching over Hollowood's union activities. In these circumstances, where Gunn was in the process of investigating the report, it is understandable that Gunn would not reveal the source of the report at this time.

In sum, we find that Gunn's comments to Hollowood did not create the impression of surveillance, and we shall accordingly dismiss this portion of the complaint.

2. We agree with the judge that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Hollowood following her appearance on a local newscast about the Respondent's changes in its OB/GYN depart-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] All dates herein are 1998 unless otherwise stated.

ment. The newscast noted that both doctors and nurses were concerned about these changes and that some of the Respondent's nurses were fighting for collective bargaining as a way to insure adequate patient care and working conditions. During the broadcast, Hollowood made statements about the inadequate staffing level of the medical teams in the department. In addition, certain statements were attributed to her by the reporter which accused the Respondent of cutting the nurses' shifts in order to replace them with less qualified employees, and of jeopardizing the health of mothers and babies by increasing the responsibilities and shortening the shifts of the OB/GYN nurses.

The judge found, and we agree, that Hollowood's June 1 television appearance constituted protected activity. See *Hacienda de Salud-Espanola*, 317 NLRB 962, 966 (1995) ("Section 7 of the Act encompasses employee communications about labor disputes with newspaper reporters."). Further, nothing Hollowood said during the interview exceeded the bounds of the protection of the Act. Indeed, the statements made by Hollowood during the interview were neither disloyal, recklessly made, nor maliciously false.

Finally, to the extent the Respondent purports to defend the termination of Hollowood based on its assertion that Hollowood's fellow employees did not want to work with her because they were angry about the comments she made during the interview, we find this defense without merit. As set forth above, the activity at issue here is protected by the Act. That activity does not lose the Act's protection merely because it angered her fellow employees or her superiors. Indeed, the subjective feelings of Hollowood's coworkers are not a relevant consideration in determining whether the Respondent's discharge of Hollowood was unlawful. Accordingly, we agree with the judge that the Respondent violated Sections 8(a)(3) and (1) of the Act by discharging Carole Hollowood because of her protected activity.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, St. Luke's Episcopal-Presbyterian Hospitals, Inc., Chesterfield, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(b) and reletter the subsequent paragraphs.

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge Carol Hollowood or any other employee for engaging in union or other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Carol Hollowood full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Carol Hollowood whole for any loss of earnings and other benefits resulting from her unlawful discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Carol Hollowood, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her in any way.

ST. LUKE'S EPISCOPAL-PRESBYTERIAN HOS-PITALS, INC.

Lynette K. Zuch, Esq., for the General Counsel.
Andrew J. Martone, Esq. (*Bobroff, Hesse, Lindmark, Martone, P.C.*), for the Respondent.
John D. Watson, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

GEORGE ALEMAN, Administrative Law Judge. This case was tried in St. Louis, Missouri, on consecutive days between August 11 and 13, 1998.[1] The initial charge, Case 14–CA–25025, was filed by Local 108 of the Textile Processors, Service Trades, Health Care, Professional, and Technical employees International Union (Local 108) on March 16, and amended on May 19. On June 8, Local 108 and Local 161 of the same International Union jointly filed a second charge, Case 14–CA–25142, which was amended on July 14. Pursuant those charges, the Regional Director for Region 14 of the National Labor Relations Board (the Board) issued a consolidated amended complaint and notice of hearing on July 21 (see GC Exh. 1[p]),[2] alleging that St. Luke's Episcopal-Presbyterian

[1] All dates herein are in 1998, unless otherwise indicated.

[2] General Counsel's Exhibits and Respondent's Exhibits are identified herein as "GC Exh." and "R. Exh." respectively, followed by the exhibit number. Reference to oral testimony is identified by transcript (Tr.) and page number.

Hospitals, Inc. (the Respondent) had in various manner violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).[3] On or about August 3, the Respondent filed an answer to the complaint admitting some, and denying other, allegations contained therein, and denying it had committed any unfair labor practices. All parties were thereafter afforded a full opportunity to appear at the hearing, to call and examine witnesses, to submit oral as well as written evidence, and to argue orally on the record.

On the basis of the entire record in this proceeding, including my observation of the demeanor of the witnesses, and after considering posthearing briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Missouri corporation, with an office and place of business in Chesterfield, Missouri, is engaged in the operation of an acute care hospital at that location.[4] During the 12-month period ending April 30, a representative period, the Respondent's gross revenues from the conduct of its business operation exceeded $250,000, and during that same period it purchased and received in the course of its business operations goods and materials valued in excess of $50,000 directly from points outside the State of Missouri. I find, based on admissions in its answer and stipulations at the hearing, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Locals 108 and 161 are labor organizations within the meaning of Section 2(5) of the Act (Tr. 10–11).

II. ALLEGED UNFAIR LABOR PRACTICES

A. The issues

The complaint alleges that the Respondent committed numerous violations of Section 8(a)(1) and (3) of the Act. Specifically, it alleges that the Respondent, through its managers and supervisors, violated Section 8(a)(1) by: unlawfully interrogating employees about their union membership, activities, or sympathies; soliciting an employee to remove his name from a union card or representation petition; threatening to discharge supervisors and employees because of the employees' union activities; threatening to decrease employee wages and to replace employees if they chose to be represented by a union; creating an impression that it was keeping its employees' union activities under surveillance; and discriminatorily removing union literature from a bulletin board. It further alleges that the Respondent violated Section 8(a)(3) by discharging employee Carolyn Hollowood for engaging in union and other protected concerted activity, and to discourage employees from engaging in such activities (GC Exh. 1[p]).

[3] The Regional Director also consolidated for hearing certain objections to an election filed by Local 108 in Case 14–RC–11921, as the conduct being alleged as objectionable paralleled several of the unfair labor practice allegations in the complaint (GC Exh. 1[g]).

[4] The Respondent is part of a group of hospitals known as the unity group.

B. The facts

1. Respondent's operations and change from 24-hour to a 12-hour shift

The Respondent, as noted, operates an acute care hospital. Part of its facilities include an obstetrical (OB/GYN) unit or department containing two operating rooms where some 60 cesarean-type (C-section) deliveries per month are performed. Prior to August 1997, eight registered nurse first assistants (RNFA), of which Hollowood was one, were assigned to the operating rooms on 24-hour shifts. The RNFA's responsibility is to "first assist" the surgeon in performing C-sections, tubal litigations, and hysterectomies. In August 1997, the Respondent decided to change from a 24-hour to a 12-hour shift assignment for RNFAs, and met with the RNFAs to discuss the change. The meeting was conducted by Respondent's vice president of patient services, Gail Wagner, director of nursing, Susan Winchester, and patient care manager for the labor & delivery (L&D) and OB/GYN units, Janet Gunn. The reason for the change, according to Respondent, was to make more efficient use of the staff and to provide better care for the unit. The RNFAs were told that they would be trained and expected to assist in the care of patients on the L&D floor when not assisting in the operating room, but that their duties would be such that they would be able to immediately leave their patient care responsibilities in the event they were needed for a C-section operation. All RNFAs were then offered the opportunity to transfer to the new 12-hour shift schedules.

2. The RNFA opposition to the shift change

This schedule change was not well received by Hollowood and the seven other RNFAs assigned to the OB/GYN department who felt the change would possibly result in a decline in the quality of patient care and in a loss of three RNFA positions. Regarding the latter, Hollowood testified that she and other RNFAs were concerned that three of them would lose their positions and be replaced by untrained personnel (Tr. 58). On August 20, 1997, Hollowood and seven other RNFAs, believing that their views were not being heard, sent a letter to "The Obstetricians of St. Luke's Hospital" explaining their reasons for opposing the shift change. The RNFAs collectively identified themselves in the letter as the "24-hour C-Section Team of St. Luke's" (GC Exh. 3). The letter reads as follows:

> This letter is to express our concerns and make you aware of the proposed changes regarding the C-Section Team at St. Luke's. The changes are as follows:
>
> > Change the 24 hour shift to two 12 hour shifts
> > Eliminate 3 RNFA positions
> > Replace eliminated RNFA positions with unlicensed assistive personnel.
>
> Administration believes that these changes are necessary to reduce cost. They have expressed to us "no other hospital in the St. Louis area has a C-Section team, and St. Luke's must conform to remain competitive in the market place today."
>
> We feel by making these changes, the quality of service that you have come to know and expect will cease to exist. We have been told by physicians that the present C-Section team has set the standards by which other hospitals in the metropolitan areas are judged in malpractice suits. Over the years, we have developed an efficient team to respond to your needs in crisis situations. It is our opin-

> ion that the safety of your patients will be compromised with the above changes.
>
> We know you have been told that the C-Section team coverage will still be available. However, with the above stated changes, very few, if any of the present RNFAs will remain in Labor and Delivery. Since there is a shortage of RNFAs in the area, we know the likelihood of finding qualified assistants for the OB department is very doubtful. When we expressed a concern regarding this probable situation, we were told that they would train the staff nurses to assist you in the surgical suite.
>
> At the scheduled meeting on August 25th, we would appreciate it if you would express your concerns to Dr. Rigg and administration regarding this matter. It has been, and always will be our intention to maintain the best quality of care for your patients, and to provide you with a service "that no other hospital in the St. Louis area has."

Hollowood testified that she helped draft the letter, and that copies of the letter were also sent to Respondent's president, Dr. George L. Tucker, to Dr. Lee Rigg, the chief of the OB/GYN department, and to Wagner (Tr. 59). Explaining why she and the other RNFAs decided to write the letter, Hollowood stated, "We were concerned about three RN first assists losing their position; and we were also concerned about untrained assistant personnel taking the places of our position" (Tr. 58). On December 17, 1997, Gunn sent Hollowood a letter asking if she would be interested in applying for either a full-or part-time position (both 12-hour shifts) on the night shift in the LDRP unit as a staff nurse. Hollowood declined the offer stating that she preferred to remain in the L&D unit until the 24-hour shifts were totally eliminated (R. Exhs. 5, 6).

By early February, only four RNFAs remained in the OB/GYN department presumably as a result of the change in shift schedule (Tr. 61). On February 9, three of the four RNFAs—Hollowood, Richard Fiehler, and David Keune—sent a letter to Respondent's administrators including Tucker, Wagner, Rigg, Winchester, and Gunn, and to chairman of the board, Richard Batrum (Tr. 62), in which they complained that management had not been communicating with them regarding the changes occurring at the OB/GYN department, and "voicing [their] frustration and concerns over the inexperience and the training of the people that were going to be [their] replacements" (GC Exh. 4; Tr. 61). The letter states that "few of the newly hired or the in-house trainees come close to meeting any of the criteria" set forth in Respondent's own job descriptions or the standards set for RNFAs by the association of operating room nurses (AORN), that unsafe working conditions had been observed in the L&D operating room, and documented, which were directly related to the inexperience of their replacements, and that "obstetrical surgeons share[d] their concerns." The February 9, letter then proceeds to discuss the impact the change was having on the RNFAs' terms and conditions of employment. The letter in this regard, in relevant part, states:

> In August 1997, we were advised that the transition from 24 hour coverage to 12 hour coverage in L&D would occur by December 1, 1997. This date was then extended to March 1, 1998 [sic]. We agreed to stay. At this time management is not prepared to give us a transition date. Due to the insecurity of our positions, we are requesting a written one-year contract, signed by administration, for the time period of April 1, 1998 through April 1, 1999, with compensation based on the same grade level and salary scale as the RNFA that work in the O.R.
>
> Since our negotiated transfer positions are in jeopardy due to our loyalty to the obstetrical patients, the surgeons, and St. Luke's Hospital, we feel our job security needs to be addressed. This one-year time period will give L&D time to properly train some of the surgical technicians, although to meet AORN standards of as [sic] RNFA the process takes at least two years.

Director of surgical services, Patricia Geldbach, testified that on receiving the letter, she, Wagner, and Gunn met with Hollowood and the other signatories, RNFA Keune and Fiehler, to respond to their concerns. Those concerns, according to Geldbach, included "job security" issues raised by the RNFAs, such as whether jobs would still be available for them after the shift change, and whether their vacation requests would still be honored. Geldbach also recalled the RNFAs asking to have their salaries adjusted upward to compensate them for participating in a training program intended to prepare them to take on the additional duties.

3. The Unions' organizational drives and Hollowood's union activities

In early 1998, around the time that Hollowood and other RNFAs were voicing their concerns to management about the changes in the OB/GYN department, Local 108 began a campaign to organize Respondent's maintenance employees. To this end, Local 108, on February 20, petitioned the Board for an election.[5] On February 22, Hollowood and other RN's met with several maintenance employees and Local 108's secretary/treasurer, John Watson, at Hollowood's home to discuss how the RN's might be able to assist Local 108 in its organizational efforts, and to strategize on how the RN's might also obtain union representation (Tr. 63).

Hollowood testified that several other union meetings were held among RNs after February 22, including one on March 4, during which those in attendance signed a petition authorizing Local 161 to represent them for collective-bargaining purposes. Between March 5 and April 23, she solicited some 42 signatures from employees, and openly distributed union flyers notifying them of upcoming union meetings (Tr. 68; GC Exh. 5). The Respondent acknowledges knowing of Hollowood's union activities (Tr. 70; R. Exhs. 8–9).

She further testified to an incident that occurred on March 19, regarding her activities. Thus, around 10 a.m. on March 19, according to Hollowood, she was called to Gunn's office and told that Geldbach reported that Hollowood was seen soliciting signatures in the hospital's outpatient recovery area. When Hollowood denied being in the outpatient recovery area, Gunn repeated that this is what Geldbach had told her, and cautioned Hollowood against soliciting in that area. Hollowood admitted engaging in solicitation, but claims she told Gunn her activities had been conducted outside Respondent's facility, not in a patient care area. Gunn responded, "Well, I hope that you are not

[5] The bargaining unit sought to be represented by the Union included:

> all full-time and regular part-time skilled maintenance employees employed at the Employer's Chesterfield, Missouri hospital facility, excluding employees employed in the Urgent Care and Surrey Place operations, bio-med technicians, office clerical and professional employees, guards, supervisors as defined in the Act, and all other employees.

soliciting names in patient care areas, you know better" (Tr. 64–65). Hollowood again denied the allegation. Around 1 p.m. that same day, Hollowood confronted Geldbach about Gunn's accusation and Geldbach admitted a mistake had been made, noting that Buschol, a staff nurse in the outpatient recovery area, had only reported seeing Hollowood "getting petitions," not that she had been soliciting in the outpatient recovery area. Geldbach, Hollowood admits, stated that the entire incident had been a misunderstanding (Tr. 66).

Gunn recalls speaking with Hollowood following receipt of a report from Geldbach that Hollowood was seen soliciting in a patient care area, conduct purportedly prohibited by hospital policy. Hollowood, according to Gunn, admitted having solicited in an employee smoking area, but denied doing so in the outpatient recovery area. Gunn claims she apologized to Hollowood at this point, assured her she would follow up on the report, and then "simply referred it back to Geldbach" who "took care of it" (Tr. 255).[6]

Geldbach claims she received a report from head nurse, Denise Kelly, that Hollowood had been soliciting in the outpatient recovery area. Kelly, however, did not witness the solicitation firsthand but rather, according to Geldbach, received the information from Debbie Buschol, a staff nurse in the outpatient recovery area. Geldbach reported the incident to Gunn. She claims that after meeting with Hollowood, Gunn called her back and explained that Hollowood denied soliciting in the outpatient recovery area. Geldbach claims she then investigated the matter further and learned that Buschol had in fact not seen Hollowood soliciting in the outpatient care area but instead had only seen her soliciting an outpatient care employee in a smoking area. She recalls telling Hollowood, when the latter questioned her about the matter, that the entire incident had been a misunderstanding and resulted from a "miscommunication."[7] The matter was apparently dropped at this point (Tr. 329–331).

On March 6, a Board election pursuant to Local 108's petition was held which Local 108 lost by a vote of 16–4. Local 108 thereafter timely filed 15 objections to the election claiming that the Respondent had engaged in conduct which interfered with the unit employees' free choice in the election, requiring that the election be set aside and that the Board either issue a bargaining order or direct that a new election be held (GC Exh. 1[g], Exh. 1). The merits of those objections are currently before me for resolution and will be discussed below.

Hollowood meanwhile continued with her organizing efforts, including talking to nurses and soliciting their signatures on union support petitions, the purpose of which, she testified, was so that "we could have a say in the safe environment for our patients and the working conditions that were deteriorating" (Tr. 64). In mid-May, Hollowood distributed to employees a letter signed by 13 physicians expressing their support for the RN's organizational drive, and their "efforts to refocus patient care back to optimal staffing conditions rather than trendy business practices" (GC Exh. 6.) In the letter, the physicians state that they "support your movement towards collective bargaining to promote quality working conditions to insure safe patient care!" (GC Exh. 6). Hollowood also distributed another letter, received in evidence as General Counsel's Exhibit 7, informing employees of the existence of a "Core group" of RNs, of which Hollowood was a member, who were working towards obtaining union representation.[8]

4. The June 1 telecast

On June 1, Hollowood, joined by RN Mike O'Neil, another "core group" member, and a Dr. David Gearhart, were interviewed by a local channel 5 television reporter regarding changes the hospital was making in its OB/GYN section, including the change from a 24-hour to 12-hour shift. Hollowood's comments during the interview, which, according to Respondent was the catalyst for her discharge, followed some brief comments by channel 5 reporter, Ruth Ezell.[9] The following is a verbatim account of the interview:

> ANCHOR: Good evening. Thank you for joining us. Our top story at ten, some doctors and nurses at St. Luke's Hospital are angry about changes they say threaten the health of expectant mothers in the delivery room.
>
> ANCHOR 2: The changes effect the medical teams that perform C-sections at St. Luke's. Newschannel 5's Ruth Ezell joins us now with the story. Ruth?
>
> REPORTER: Well Rick and Karen there are eight specially trained nurses that assist staff obstetricians with C-sections at St. Luke's. They each have anywhere between 15 to 23 years of seniority with the hospital and a whole lot of experience. Until recently, the nurses worked on a system of 24 hour shifts they say was essential to the care of mothers ready to deliver. Well now the RNs accuse the hospital of cutting their shift in order to replace them with less qualified employees.
>
> Registered nurse first assistant Carol Hollowood says when a patient comes into the delivery room at St. Luke's,

[6] Although both Hollowood and Gunn agree that their meeting centered on Hollowood's union solicitation, their accounts of how the meeting was conducted vary in certain respects. Gunn, for example, proffered a more benign version of the meeting, testifying, as noted, that she asked Hollowood to sit down, apologized when Hollowood denied having solicited in the outpatient recovery area, and agreed to follow up on the matter. Hollowood's version, however, suggests the meeting had a more confrontational tone, with Gunn twice accusing, and Hollowood twice denying, that she had solicited in a patient care area. Hollowood's account makes no mention of being asked to sit down, or of Gunn apologizing for the incident and agreeing to look further into the matter. Hollowood, as noted, recalls mentioning Buschol as the person who might have seen her engaged in solicitation in the smoking area, and identifying employee Ramsey as the individual she was soliciting. There is no indication in Hollowood's account of Gunn admitting or denying that Buschol was the source of the report, and Gunn, in her version, makes no mention of Buschol's or Ramsey's name having been brought up by Hollowood. I credit Hollowood's more detailed account of her meeting with Gunn.

[7] Geldbach's testimony that this conversation with Hollowood occurred "a few days, within a week later" of the incident is inconsistent with Hollowood's assertion that the conversation took place just three hours after her meeting with Gunn. I believe Geldbach was mistaken as to the timing of this conversation and have thus accepted Hollowood's version that the conversation occurred at 1 p.m. on March 19.

[8] The core group consisted of some five–seven nursing employees who would meet with Union Representative Watson to discuss organizing strategies. In effect, the core group appears to have served as the in-house organizing committee.

[9] Hollowood testified that someone other than herself was scheduled to do the interview but when the person couldn't make it, she went in that person's place (Tr. 115). Gearhart was one of the 13 doctors who signed the support letter Hollowood distributed to employees in mid-May. Unlike Hollowood and O'Neil, Gearhart was not an employee of the Respondent but instead had a contractual relationship with the Hospital.

she's treated like a member of the family. But Hollowood accuses the powers that be of jeopardizing the health of mothers and babies by offering her and her counterparts short shifts and more responsibilities.

CAROL HOLLOWOOD RN (ST. LUKE'S HOSPITAL): Initially two years ago we had three people on a 24 hour shift, because, as we said before, Dr. Gearhart said, that labor and delivery you have emergencies that can happen not one at a time but possible two at a time where we needed a crew of people that were qualified to assume the responsibility of these emergencies for mother and baby. And then two years ago they reduced to two and didn't allow us to do two sections at one time or two cases at one time in labor and delivery. And now what they're trying to do is have one person cover what three people did two years ago.

REPORTER: Hollowood opted to transfer to another section of the hospital. She's certain that her replacement won't have her qualifications. In February the RN first assistants wrote to St. Luke's administrative staff detailing their concerns. Some staff doctors are worried too. They include Dr. David Gearhart, the former Missouri section chairman for ACOG, the American College of Obstetricians and Gynecologists.

DR. DAVID GEARHART: I'm not going to be as a good a quarterback with seven rookies as I was with seven all star offensive linemen. We are seeing nurses replaced with patient care technicians, less than an optimal situation. And I think equally important in our particular department we've seen great surgical assistants being replaced with nurses that are not trained to do the job they have.

REPORTER: Dr. Gearhart was among more than a dozen doctors who put their support for the nurses in writing. Some of the nurses are fighting for collective bargaining as a way to insure adequate patient care and working conditions.

MIKE O'NEIL RN: There's been so many nurses in healthcare across the country that have gotten turned off to the non-responsiveness of administrators since the bottom line now controls their responses to us. Nurses are turned off to that. We are going to refocus the issues back on the patient and fight for their rights for adequate staffing. We have to do this.

REPORTER: Spokesmen for St. Luke's say there are no cutbacks taking place. In fact there's a job fair coming up in June 8th for the entire Unity Healthcare System, of which St. Luke's is a part. But…there are concerned nurses. They worry about the quality of those applicants and how they're going to be utilized if they're hired.

ANCHOR: No cutbacks in terms of manpower, in terms of hours or both?

REPORTER: Officials were not clear on that. No one is supposed to be losing their job. According to the nurses, the nurses in the C-section unit, they have the option to transfer to another department. So there should be no job cuts in terms of personnel.

Hollowood explained that she did the interview "because we were responding to some patient care issues and we wanted to bring out the fact that in order to correct these patient care issues and to make a work place a safe environment, that we had to bring it to the public." She testified that she decided to go public because "we couldn't get anybody else . . . in administration" to listen to us, and that when she and others tried to do so through the letter, it only served to guarantee that they would be transferred out of OB/GYN. Her intent, she claims, was to "bring out working conditions, unsafe conditions, and that we could benefit by collective bargaining and make things better" (Tr. 115).

5. The alleged opposition to Hollowood's remarks

According to Respondent, Hollowood's June 1 remarks caused "a pronounced reaction" among hospital employees and physicians. Thus, Wagner, Tucker, and Gunn testified that following the interview they received numerous oral and written complaints from the nursing staff and physicians expressing disapproval of Hollowood's remarks and stating that they no longer wished to work with her. Geldbach also provided some testimony regarding comments she overheard being made by certain physicians and staff nurses a day or so after the June 1 interview.

Wagner testified that soon after the interview, two physicians, Dr. Pearce and Dr. Leidenfrost, and employee Susan Browning, one of the RNFA replacements, personally complained to her about Hollowood. Pearce, she claims, expressed concern that if Hollowood were allowed to remain in the operating room suite, "she would be looking for problems to talk to other people about," that this "was not a conducive way to work in the operating room," and that it was "risky to have a person who was looking for problems when we are trying to take care of patients." Leidenfrost purportedly told her that "it was terrible that [Hollowood] would say disparaging things about the Hospital and that patient care was poor" because "he knew . . that we have good quality patient care." Leidenfrost, Wagner claims, further added that "he didn't want to work with" Hollowood, and didn't want her in his operating room.[10] Wagner also recalls Gunn reporting that she, Gunn, had received complaints from the "nursing staff" about the interview, and that the nursing staff was "very upset about what Carol [Hollowood] said on TV and felt that they didn't want to work with her."

Browning, according to Wagner, called her on the phone and complained about feeling "uncomfortable" around Hollowood, and that working conditions with Hollowood in the L&D unit were not workable. Browning also purportedly complained that the comments Hollowood had been making about the RNFA replacements not being well trained and making it unsafe for patients were not true, and purportedly told Wagner that she took personal offense at Hollowood's views in this regard. Wagner, however, admitted uncertainty as to whether Browning's remarks were made in response to Hollowood's June 1,

[10] Although Wagner claims that Leidenfrost complained to her only about not wanting to work with Hollowood, a letter purportedly sent from Leidenfrost to Tucker, received in evidence as R. Exh. 10, shows that Leidenfrost was in fact refusing to work with two of the three individuals who gave the interview, presumably Hollowood and O'Neil, and not just the former. I am inclined to believe that if Leidenfrost, as shown in the letter, objected to working with both Hollowood and O'Neil, he would have mentioned this fact to Wagner, and not have limited his complaint to Hollowood, as testified to Wagner. Ironically, Hollowood testified, without contradiction, and credibly in [my] view, that she had last worked with Leidenfrost in 1991, some 7 years prior to her discharge. Why Leidenfrost would have made such a remark when Hollowood had not worked with him in so many years is somewhat of a mystery.

comments or was simply an expression of views regarding the working conditions she shared with Hollowood. Wagner further testified that Browning was the only staff employee to complain to her about Hollowood. (Tr. 32–34.)

Pearce and Leidenfrost were not called to testify, leaving uncorroborated Wagner's claim of what they may have said to her, and rendering her testimony in this regard nothing more than hearsay. Although Browning did testify, she makes no mention in her testimony of having spoken to Wagner about Hollowood. Rather, she testified only that after hearing Hollowood's June 1, remarks, she became "very upset" and ranted and raved to her patient care assistant, whom she identified only as Nancy, about the telecast. Her failure to make reference to any conversation between herself and Wagner regarding Hollowood leads me to believe that no such conversation took place, and that Wagner's claim to the contrary is a mere fabrication.

Browning, nevertheless, testified, but only in very general terms, that days after the June 1 interview, people remained "amazed" and felt insulted about Hollowood's remarks, pointing out that the entire obstetrical team, including the surgery team, shared this view. However, as found above, she never reported these complaints to Wagner who, as more fully discussed below, claims to have been involved in Hollowood's eventual termination. Nor she did report these complaints to Tucker, who was also responsible for the discharge, for Browning does not mention having done so and Tucker, in his testimony, likewise makes no mention of having received any such complaints from Browning. It is further worth noting that despite her above testimony, Browning never testified that the obstetrical or surgical teams had expressed an unwillingness to continue working with Hollowood.

Browning, however, did testify regarding her own personal unwillingness to work with Hollowood and apparently sent Respondent's personnel department a letter on June 5, presumably a few hours before Hollowood was discharged, expressing her views in this regard.[11] In her letter, Browning states, inter alia, that she has had difficulty working with Hollowood for the past 6 months, and that working conditions with Hollowood had become so untenable that she, Browning, would no longer be able to work with Hollowood (R. Exh. 12). In fact, at the hearing, Browning was adamant that she did not even want to be in the same building with Hollowood (Tr. 311). Browning, however, struck me as a highly biased witness having a personal gripe against, as well as deep resentment and animosity towards, Hollowood. This became quite evident not just from her demeanor, but also from her testimony that transferring Hollowood to a department some three floors from the L&D unit, resulting in Browning having virtually no contact with Hollowood, would not be satisfactory to her, and that she would instead prefer not to be in the same building with Hollowood. I am convinced that her testimony regarding ~~Hollowood, as well as her June 5, lett~~er, was colored by her lowood, as well as her June 5, letter, was colored by her dislike for Hollowood and, consequently, give it no weight.

Gunn also testified to receiving numerous complaints from staff members and "many physicians" regarding the interview, and described them as being "outraged, very angry and emotional, unable to believe what had occurred, and fearful that what had been said had messed up with their patients . . . that wanted to come to St. Luke's to have their baby." However, when asked to name which of the "many physicians" complained to her, Gunn could only name three—Drs. Pearse, Reinstein, and Kline—adding, "I just don't remember the names." She subsequently admitted that she never actually spoke to Reinstein but had, instead, learned of the latter's complaint through some unnamed associate. Asked if any of these "many physicians" had expressed to her a reluctance to work with Hollowood because of her June 1 remarks, Gunn could only recall that "perhaps one" might have done so.

Gunn did not corroborate Wagner's claim that she, Gunn, had reported to her that the "nursing staff" no longer wanted to work with Hollowood. Rather, Gunn testified only that staff members had been angry and upset by Hollowood's remarks, but never claimed to have heard the nursing staff expressing a refusal to work with Hollowood, making it highly unlikely that she would have made such a statement to Wagner. I am inclined to believe that Wagner simply embellished, if not outright fabricated, what Gunn might have told her, as she did with Browning. This is not to suggest that Gunn was a credible witness for there is evidence to suggest that she too was prone to prevarication. Gunn, for example, testified that she had not documented any of the complaints received from the purported "many physicians" who contacted her. In an effort to establish that some complaints had been documented, the Respondent showed Gunn a June 4 letter purportedly from Pearce, and asked if the letter had refreshed her recollection "as to whether written documentation was provided." Gunn promptly replied that the letter had indeed refreshed her recollection in this regard. However, during voir dire examination by the General Counsel, Gunn was asked if she recalled who Pearce had given the letter to. Her response, that she did not recall who Pearse might have given it to, suggests she had prior knowledge but was simply unable to recall on the witness stand if Pearce gave the letter to her or to someone else (Tr. 276). When pressed on the issue, Gunn conceded that she had never seen the Pearce letter before it was shown to her by Respondent's counsel at the hearing. Gunn's misleading claim of being unable to recall who Pearce gave the letter to, when she in fact had never before seen the letter, revealed a predisposition on her part to say whatever was necessary, even if untrue, to assist the Respondent's case. Her blatant attempt in this regard to mislead casts doubt on her entire testimony, and convinces me that her further claim of having received complaints from "many physicians," including Pearse, Kline, and Reinstein was, if not fabricated, clearly exaggerated, and unworthy of belief.

Tucker's limited testimony regarding complaints he may have received was so vague and devoid of specificity as to be entitled to little or no weight. Tucker, for example, testified to receiving written complaints from Leidenfrost (whom he often mistakenly referred to as "Lydencross") and Respondent's chief of surgery, David Krajcovic, and to have spoken with both of them, as well as with Pearce and a Dr. Ramas, an orthopedic surgeon. Regarding the written complaints, the Respondent offered into evidence, without objection from the General

[11] Browning's June 5 letter could not have played any role in Hollowood's discharge since both Wagner and Tucker testified that the decision to terminate Hollowood was made either on June 3 or 4 (Tr. 24, 292). Further, while Browning claims to have delivered her letter to personnel a few hours before Hollowood was notified of the termination, there is no indication that Wagner ever received a copy of that letter before she effectuated the discharge. Wagner, in fact, testified to having received nothing in writing from Browning (Tr. 34). Tucker, likewise, makes no mention of having seen Browning's letter. Accordingly, Browning's letter is of no relevance here and is given no weight.

Counsel and the Charging Party, a handwritten note, dated June 2, purportedly from Leidenfrost, complaining about two "disloyal employees," presumably Hollowood and O'Neil, and suggesting that they be fired or kept out of his work area because they were "poison to this organization." (R. Exh. 10.) While the letter, as noted, was not objected to by the opposing parties, it was never properly authenticated as having been prepared or signed by Leidenfrost. Tucker, for example, testified only that on arriving at work the day after the June 1 telecast, he found the letter sitting on his desk and assumed it was meant for him. There is no evidence to indicate how the letter got there. Nor was Tucker ever asked if he recognized the handwriting or the signature on the letter as belonging to Leidenfrost. Indeed, Tucker's repeated reference to Leidenfrost as "Lydencross" suggests he may not have been so familiar with Leidenfrost as to have been able to identify the latter's handwriting or signature.

Although Tucker claims to have spoken with Leidenfrost following receipt of the letter, and further claims that during the conversation Leidenfrost essentially reiterated what had been said in the letter, I view his testimony in this regard with a high degree of skepticism. From a demeanor standpoint, Tucker was not a very convincing witness, and inconsistencies between his testimony and that provided by Wagner regarding Hollowood's discharge, as will be shown below, cast doubt not just on how the discharge decision was made but also on his, as well as Wagner's entire testimony. Thus, I am not convinced that Tucker in fact had a conversation with Leidenfrost after purportedly finding the letter on his desk. Leidenfrost, as noted, was not called to corroborate Tucker in this regard or, for that matter, to authenticate Respondent's Exhibit 10 as his own, and there is no indication in the record or claim being made by Respondent that he was unavailable to do so. Accordingly, I give no weight to Respondent's Exhibit 10, nor credit Tucker's claim of having spoken to Leidenfrost soon after receiving the letter.

Tucker's testimony, that he received a letter, dated June 4, from Krajcovic complaining about Hollowood, suffers from the same or similar infirmity as did his testimony regarding Leidenfrost. The letter in question, received in evidence as Respondent's Exhibit 11, again without objection from the General Counsel or the Charging Party, was not authenticated as having been prepared, sent, or signed by Krajcovic. Rather, Tucker testified that he asked some unidentified person, who may or may not have been someone named Brenda, to solicit a letter from Krajcovic on learning that Krajcovic had been upset by the June 1 interview. Tucker received the letter not from Krajcovic but from this unidentified person. Tucker was never asked if he recognized the signature as belonging to Krajcovic, and Krajcovic, like Leidenfrost, was not called to confirm that he wrote and sent the letter. As with Leidenfrost, the Respondent does not contend, nor does the evidence show, that Krajcovic was unavailable to testify. Respondent's failure to properly authenticate the Krajcovic letter as having been authored and sent by him, I find, renders the document unreliable.

However, even if the letter had been properly authenticated, it would nevertheless be entitled to little or no weight, for Tucker was unable to recall if he received the letter before or after Hollowood's June 5 discharge date, admitting it could very well have been received after June 5 (Tr. 291). Thus, if Tucker received the letter after the decision to discharge Hollowood was made, then it is reasonable to assume that Tucker had no knowledge of Krajcovic's written complaint when he discharged Hollowood. It should be noted that while Tucker claims to have heard that Krajcovic was upset about the interview, and that it was this information which purportedly prompted him to solicit a statement from Krajcovic, Tucker does not claim to have known what Krajcovic was upset about prior to requesting the letter. In light of these facts, I give no weight whatsoever to the Krajcovic letter and find it had no bearing on the decision to terminate Hollowood. Although Tucker also claims to have spoken with Krajcovic before Hollowood was discharged, he offered no specifics as to what might have been discussed or when precisely this alleged conversation took place. It is therefore not known if Hollowood was the subject of that discussion or, for that matter, whether the conversation occurred before or after the June 1 telecast. Thus, while Tucker's claim that he had a conversation with Krajcovic before Hollowood was discharged does not ring true, even if I were credit his testimony in this regard the vague and ambiguous nature of said testimony renders it of little or no value to the issue of Hollowood's discharge.

Tucker, as noted, also claims to have received complaints from Pearce and Ramas. Pearce purportedly told him that "the staff in the delivery area was in a high state of shock, anxiety, and . . . were extraordinarily angry," and "strongly" advised Tucker "not to have Carol [Hollowood] report back there to work." Ramas, Pearce claims, "was very angry" and "raised the issue . . . even more forcefully" than did Pearce, and went so far as to "threaten physical violence" (Tr. 283–284). Again, Tucker's testimony as to his alleged conversations with these two physicians rang hollow. Tucker, for example, offered no clue as when these alleged conversations might have taken place. It is not known, for example, if they occurred before or after the decision to terminate Hollowood was made. More importantly, they were not corroborated by Pearce or Ramas, neither of whom testified. Accordingly, I do not credit Tucker's testimony that he received complaints from Pearce and Ramas. Further, even if I were to believe that such conversations took place, it cannot be said that they played any role in the decision to terminate Hollowood, as it is unclear from Tucker's testimony just when they occurred.

Finally, Geldbach testified to having had separate conversations with physicians Kim, Freidrich, and Druck, Respondent's chief of medical staff, on June 2, in which they expressed being angry and upset by the telecast and concerned about the implications it might have on patient care and the Hospital in general.[12] Their anger, according to Geldbach, was directed at all three individuals who participated in the interview, not just Hollowood. She made no mention in her testimony of these three physicians having expressed an unwillingness to work with Hollowood. Geldbach further claims to have spoken with Leidenfrost, possibly on June 3, and that he, unlike the other three physicians, was adamant about not wanting Hollowood to be assigned to his operating room (Tr. 332–333, 337). She also testified to having heard Staff Nurses Kathy Sempler, Donna

[12] On redirect examination by Respondent's counsel, Geldbach mentioned, almost in passing, that Krajcovic had also "requested not to have Carol in his room either" (Tr. 346). Yet, when asked by Respondent's counsel on direct examination who she had spoken to her regarding the June 1 incident, or about Hollowood in particular, Geldbach never mentioned Krajcovic. Thus, it is unclear from her testimony if Geldbach on redirect was asserting that Krajcovic made this remark directly to her, or whether she heard it from some other source.

Weber, and Mary Spencer engaged in a general discussion of the June 1 telecast but could not recall what was said by any of the three (Tr. 338). Geldbach admits she did not report the alleged complaints made to her by Physicians Kim, Freidrich, Druck, and Leidenfrost, or the unspecified comments purportedly made by nurses Sempler, Weber, and Spencer, to Tucker or Wagner. Rather, she claims to have passed on what she was told and heard to her immediate supervisor, Associate Hospital Administrator Brenda Kelley (Tr. 346).

I give no weight to Geldbach's above testimony, for even if I were to believe her claims as to what the above-four physicians may have told her, or what she might have overheard from the three nurses, there is simply no evidence to suggest that Tucker and/or Wagner knew of, or considered, such comments when they made the decision to terminate Hollowood or, for that matter, at any time thereafter. Thus, by her own admission, Geldbach only reported what she purportedly had heard or been told to her supervisor, Kelley. Kelley was not called to corroborate Geldbach in this regard or to explain whether such information was passed on to Tucker or Wagner. Nor, as noted, did either Tucker or Wagner claim to have received any such information from Kelley. Geldbach's testimony as to what she may have heard or been told regarding the June 1 interview or Hollowood in particular is, therefore, of no real relevance here as no showing has been made that such information played a role in Hollowood's discharge.

6. Hollowood is fired

Both Wagner and Tucker agree that the decision to terminate Hollowood was made either on June 3 or 4. Their testimonies, however, conflict on the question of how that decision was made, and who took part in that decision. Wagner's testimony is somewhat confusing and at times self-contradictory. Thus, at one point in her testimony, Wagner claims that she, Gunn, and Tucker were "involved" in the decision. However, she also testified that the actual decision to terminate was made by Tucker, and not her or Gunn. Yet, when asked elsewhere in her testimony if she had reviewed the videotapes of the TV interview, Wagner replied that she had, and believed Dr. Tucker had also done so "before we decided to fire Hollowood (Tr. 37). Similarly, asked if she had relied on "any other documents in making the determination to fire Hollowood," Wagner replied, "Basically, it was based on the complaints from the staff and physicians about working with Carol and the concern for patient setting" (Tr. 37–38).[13] Clearly, her use of the pronoun "we," as well as her description of what she relied on in making the decision, suggests some involvement by her in the decision, and would appear to contradict her prior assertion that the decision was made by Tucker alone. Wagner further claims that she, Gunn, and Tucker were not together when the decision was made, and that she first met with Gunn, and then met separately with Tucker, without Gunn, to discuss the discharge (Tr. 23).

Wagner claims that in her meeting with Tucker, she told him of the complaints she and Gunn had received from staff and physicians regarding Hollowood's June 1 remarks, stating that these individuals "were very upset about the things that were said, disparaging people who worked there, that they weren't competent and that things were unsafe for the patients." According to Wagner, she asked Tucker for an opportunity to convince the staff to work with Hollowood, but Tucker declined to do so because "you can't make people work in a good setting in a tense situation." (Tr. 52.) She further claims that she, and presumably Gunn and Tucker, reviewed Hollowood's personnel file prior to making the decision to fire her.

Tucker, however, confirmed none of what Wagner said. Thus, he testified that he decided to discharge Hollowood after consulting with Respondent's attorney, John Thomas, and its chief operating officer, Jim Hobbs. He makes no mention in his testimony of ever having met with Wagner and/or Gunn to discuss Hollowood's discharge or of consulting with either or both of them regarding the dismissal. Nor did he corroborate Wagner's claim that she reported to him the complaints she had received from hospital staff and physicians about Hollowood. Rather, Tucker in his testimony only discussed the complaints he purportedly received directly from Leidenfrost, Krajcovic, Pearse, and Ramas. He never stated that these complaints had been forwarded to him through Wagner. In fact, Tucker makes no mention whatsoever of Wagner or Gunn in his testimony. Thus, he did not confirm Wagner's further assertion that she asked him for an opportunity to convince the staff employees to work with Hollowood. Gunn, for her part, provided no testimony as to her involvement, if any, in Hollowood's termination and, consequently, corroborated neither Wagner's nor Tucker's version of the discharge.[14]

I found neither Tucker nor Wagner's version of the discharge particularly credible, especially in light of the inconsistencies in their respective accounts. From a demeanor standpoint, both seemed less than candid in their recitation of events, Wagner more so than Tucker, in my view. Thus, I do not believe Wagner's claim that she asked Tucker for an opportunity to convince staff employees to continue working with Hollowood, for it would appear to be inconsistent with her own testimony that she did not try to counsel Hollowood because "it would not have been helpful." (Tr. 51.) Nor could she have told Tucker that the "nursing staff" was refusing to work with Hollowood, for her claim of having received this information from Gunn, as noted, is not corroborated by the latter. The only staff nurse shown in the record to expressed opposition to working with Hollowood was Browning. However, as found above, Browning does not claim to have told Wagner about her views in this regard. Notwithstanding her overall lack of credibility, I do believe that Wagner had some involvement in the decision to terminate Hollowood for, as noted below, it was she who prepared the discharge letter and who on June 5, implemented that decision.

On or about June 5, Wagner prepared a letter of termination that was to be given to Hollowood later that day. The letter, in pertinent part, reads as follows:

> This is to notify you that your Salary Agreement and employment with St. Luke's Episcopal-Presbyterian Hospitals are terminated effective immediately. By your actions and behavior, you have created an atmosphere of dis-

[13] She subsequently added that Hollowood's personnel file was reviewed in connection with the discharge. While she did not specifically mention that Gunn and Tucker took part in reviewing the file, given her, albeit confusing, claim that she, Tucker and Gunn all took part in the discharge decision, her testimony that "we looked over her . . . personnel file" clearly suggests that all three perused the file before discharging Hollowood.

[14] Gunn, at one point, was asked by the General Counsel if she was involved in the discharge. While I overruled the Respondent's objection to the question, for reasons unknown the General Counsel did not solicit a response to the question.

> trust and enmity, and physicians and nurses have now refused to work with you as a result of your wrongfully disparaging their professionalism and performance. [GC Exh. 2.]

That same day, Wagner called Hollowood at home and left a message for Hollowood to call her back. On returning home around 1:30 p.m. and getting Wagner's message, Hollowood called Wagner who said she wanted to speak with Hollowood. Hollowood went to the hospital shortly thereafter and met with Wagner. Jeannette Taafe, from human resources, was also present at this meeting. Wagner claims she read the above letter to Hollowood, gave it to her, and asked if she had any questions. Hollowood purportedly asked only when she would be receiving her last paycheck. Wagner also recalls that Hollowood asked to make a phone call, and was given permission to do so, and also asked about retrieving her personal belongings. (Tr. 52–55.)

Hollowood provided a more detailed and, in my view, credible version of the discharge meeting. Thus, she testified that on arriving at Wagner's office, Wagner asked her to have a seat, then commented, "First of all, I want to tell you that this is not negotiable." When Hollowood replied she understood, Wagner told her she had a letter for Hollowood, gave her a copy, and stated, "As of right now, your employment with St. Luke's Hospital is terminated." Wagner than asked Hollowood for her locker combination stating she would have Gunn retrieve her belongings. Hollowood responded that she had no problem going upstairs herself to pick up her own belongings, but Wagner replied, "No, I just don't think you want to go up there." When Hollowood repeated that she had no problem going by herself, Wagner insisted that Gunn would retrieve her belongings, at which point Hollowood agreed. Wagner then asked Hollowood to wait outside while she waited for Gunn to return, at which point Hollowood asked, and was given permission, to use the phone. Approximately 10 minutes later, according to Hollowood, she came out of the office and when she asked Gunn about her belongings, the latter replied that it would take a little more time. Hollowood protested that she did not want to sit there on display waiting for her personal things to arrive, and asked if a security officer could bring the things to her house just over a mile from the Hospital. Wagner responded that while it was not standard procedure, she would be willing to do so. Hollowood then asked about her final paycheck and was told the Hospital had not had enough time to get it prepared. Wagner assured Hollowood they would call her when the check was ready, and Hollowood said "OK," and left. (Tr. 82–83.)

O'Neil was not discharged nor disciplined in any manner for his part in the interview because, according to Respondent, he was simply "tout[ing] the benefits of unionization" and "spoke only of union organizing issues" (R. Exhs. 9, 26). According to Tucker, he did not fire O'Neil because "[h]e didn't say anything disparaging about the abilities or the training of any of our St. Luke's employees, nor did he say anything disparaging about the care patients received at our hospital" (Tr. 286). In contrast, Hollowood, the Respondent claims, "provided false information to the reporter and made false statements disparaging the qualifications of the other RNFAs, which were only designed to cast doubt on the Hospital's quality of patient care" (R. Exh. 9). As to Dr. Gearhart, Tucker testified that he had breached three provisions of his contract with Respondent, one of which pertained to the TV interview, was given 30 days to correct the purported contract violations, and then had his contract terminated when he failed to do so (Tr. 288).

Hollowood received no advance warning of her termination. On June 7, 2 days after being fired, Hollowood received a call from a friend at another hospital associated with the unity group, who suggested that Hollowood dial Respondent's update phone line to hear a message that Dr. Tucker had recorded for hospital employees regarding the television interview. The message stated as follows:

> I am sure that most of you have either heard of or saw on television some of St. Luke's staff, including both nurses and doctors, publicly stating that we do not provide good patient care. I am personally insulted and offended. I take this as an insult not only to St. Luke's, but to all of us who work hard everyday to provide top notch care for our patients. It makes us look bad and that threatens all of our jobs. That a couple of people would do such a thing apparently to further their own agendas, regardless of the facts or the costs to their friends, co-workers, and to the hospitals, should make all of us angry.
>
> For people who have legitimate concerns about the hospital or our patients, we have always encouraged and mandated the staff to address these concerns. In this case, we looked into the matters in question and found there were no basis for the claims. It appears some people have forgotten our mission, our values, and why we are here, and have decided to trade the respect of their co-workers and the confidence of our patients for their apparent personal interests.

The record reflects that Hollowood had been employed by Respondent for some 20 years before being discharged. Hollowood testified that during that period, she received one warning in 1995 for an attendance-related problem, and a write up sometime in 1996, but that she had never before been disciplined for misconduct. She claims that at one point or another she had worked with the 100 or so OB/GYN staff doctors at the Hospital, and last worked with Dr. Leidenfrost in 1991. She also recalls having worked with Dr. Pearce approximately once or twice a month, but no mention was made as to when she last worked with him. As to Dr. Ramas, Hollowood recalls she last worked with him some 8 years prior to her discharge. Hollowood testified that she had been an active union supporter for many years. The Respondent, as noted, readily concedes knowing of her involvement in union activity.

C. Analysis and Findings

1. The 8(a)(1) allegations

a. The alleged unlawful conduct directed at employee Timothy Brewer[15]

The complaint alleges at paragraph 5(A) through (F), the General Counsel contends, and the Respondent denies, that on separate occasions in late February and early March, the Respondent, through Director of Plant Operations Dave McLaughlin, Assistant Director of Plant Operations Bill Bitter,

[15] Brewer was employed by Respondent as a grade one mechanic in the maintenance department until discharged on March 13, allegedly for insubordination. His termination was alleged as unlawful in the charge filed in Case 14–CA–25025. The Regional Director subsequently dismissed that portion of the charge pertaining to Brewer's termination, which dismissal was upheld on appeal (Tr. 8, 164).

and Supervisor Kurt Krog, all admitted 2(11) supervisors, unlawfully interrogated Brewer about his activities on behalf of Local 108, unlawfully solicited him to remove his name from the Union's support petition he signed, and threatened to fire the entire staff, hire new personnel, or replace them with Service Master, a subcontractor. It further alleges that McLaughlin unlawfully removed union literature posted by Brewer on a bulletin board while permitting other nonunion literature to remain posted.

The General Counsel relies on Brewer's testimony to support of the above allegations. Thus, Brewer testified that after Local 108 filed its petition with the Board, different supervisors, including McLaughlin, Krog, and Bitter met individually with employees to determine how they stood on the union issue (Tr. 141). Brewer recalls that during one such February 20 meeting, Bitter stated that on advice from Respondent's legal department, "[T]he supervisors were going to be talking to everyone, to see where they stand on the issue of organizing the Union." Bitter then purportedly asked Brewer if he was involved with Local 108, how he felt about it, and where he stood on the subject of bringing in a union or any kind of collective bargaining (Tr. 143–144). Brewer replied that he "was for the Union . . . and that [he] hoped it would never come between us and our immediate supervisors because we were all like one big family in the maintenance shop." Bitter then asked Brewer if he had signed the Union's support petition, and when Brewer responded affirmatively, Bitter remarked that "it was possible and maybe probable that they would replace the supervisors if they couldn't kill the Union or the organizing activity." He added that "it is never too late to withdraw your name from the petition" but that if Brewer chose not to do so, he was still "free to vote no if there was in fact an election" (Tr. 145–146).

Brewer testified that Krog made similar remarks about employees and supervisors losing their jobs if the Union were to come in. He claims he and Krog were "very close" and oftentimes would just sit and "shoot the breeze." During one such conversation held in Krog's office around March 2, Brewer recalls Krog discussing how he had once worked at another hospital in Iowa, and that when employees tried to organize themselves the hospital fired the entire staff and hired new employees, and that at another facility he worked at, the employer reclassified the employees' jobs when a union came on the scene resulting in a loss of pay and benefits. When Brewer asked if the same thing could happen at St. Luke's, Krog responded, "It's likely." Brewer claims that Krog's comments upset him and that he became concerned he might lose his job because of his union involvement.

Brewer further testified that a few days later, around March 5 or 6, he asked Krog about a rumor he had heard that Respondent was thinking about firing the entire staff and retaining an outside contractor like Service Master to replace them. Krog purportedly responded, "It's very possible," that this was "one of the many possibilities" the Respondent could explore, adding that "something would definitely happen if we did get the Union . . . into the shop," that "there would be changes, and it would be negative." (Tr. 148–149.)

Finally, Brewer testified that at around 6 a.m. on March 12, he posted an anonymous letter to employees on a employee bulletin board generally used by employees and supervisors alike to post personal and company-related items of interest to employees. Brewer stated he wrote the letter in response to what he described as the "misinformation [about the Union] that the rest of the fellows in the shop was [sic] being fed" by the Hospital (GC Exh. 13). Approximately one-half hour later, as employees were reading his letter, McLaughlin, according to Brewer, came to work and removed the letter from the bulletin board. Asked if the Respondent's practice was to remove on a daily basis all the previous postings from the bulletin board, Brewer replied, "Uh, it depends on what it was," explaining that "time-sensitive" postings having an expiration date were removed when the time expired, but that items such as cartoons might remain posted a little longer. As to antiunion propaganda posted by Respondent, Brewer claims the Respondent put up a new one every day, but did not immediately remove the old ones from the bulletin board (Tr. 179–180).

On March 13, Brewer went to McLaughlin's office after hearing rumors that he was being accused of defacing some of Respondent's "Vote No" signs. When Brewer entered McLaughlin's office, the latter asked Bitter to be present during the meeting. During the meeting, McLaughlin told Brewer that he had a witness who had seen him changing the "Vote No" signs. When Brewer denied the accusation, McLaughlin asked him how he stood "on the issue of getting a union" at the Hospital. Brewer replied that he did not feel comfortable answering the question, and simply told McLaughlin that he "was on the fence about it or something like that, that I didn't know yet how I was going to vote." Asked if he recalled what else might have been said at this meeting, Brewer answered, "Uh, nothing of any significance to this, just general, it was just general stuff," and that he "wouldn't be able to recall it sufficiently to do it under oath, and testify." However, when instructed that it was not for him to determine what was or was not relevant, he reluctantly admitted that during the conversation he and McLaughlin and/or Bitter began cursing at each other, and that when Bitter stated to him, "You cuss a lot, don't you," he replied, "Only when I am being called a liar or when I am being accused of something I did not do." Brewer, as noted, was terminated that same day for insubordination.

Bitter and Krog both testified regarding Brewer's assertions, but McLaughlin did not. Bitter admits he held individual meetings with all employees, including Brewer, and that during such meetings he simply mentioned to them that Local 108 had filed a representation petition with the Board, and read to Brewer, as he did to all other employees, a list of what a supervisor may or may not due from a document entitled, "Supervisor Do's and Don't's During a Union Organizational Drive" (Tr. 209; R. Exh. 3 attributed to him by Brewer). He also recalled the March 13 meeting held in McLaughlin's office but denied that he or McLaughlin ever accused Brewer of defacing any of the hospital's postings (Tr. 218–219).

Krog denied ever having a one-on-one conversation with Brewer in which he made the comments attributed to him by Brewer. However, he admitted having been employed at an Iowa hospital as a mechanic, and telling one or possibly two employees that soon after he began working at the Iowa hospital, some employees were reclassified and that this occurred during a union organizational drive. Krog explained that he discussed his prior experience at the Iowa hospital because the employees with whom he was speaking asked if he knew of any "situations" or "examples" regarding unions, and that the list "do's" and "don'ts" for supervisors allowed him to discuss such matters provided he did not tell employees that this "would or could happen" at St. Luke's (Tr. 192), which he denied doing. He also denied ever telling Brewer that if the Union won the

election the Respondent would fire all of the employees and hire a new staff, that it might replace them with Service Master, that supervisors would be the first to go, or that the hospital could legally reclassify all jobs to entry level jobs and cut employee wages (Tr. 190–191).

Having considered the testimony of all three witnesses in light of their demeanor, consistency, biases, and inherent probabilities, I credit Bitter's and Krog's denial that they made the statements attributed to them by Brewer. Brewer was simply not a very credible witness. His overall demeanor on the witness stand was poor. His nervousness was quite apparent, evidenced by frequent nervous laughter and lipbiting. However, his anxiety did not appear to stem from the mere act of testifying, as is often the case with witnesses, but rather from what I am convinced was his lack of candor. Thus, his claim that he was not to be "used to this," e.g., testifying (Tr. 142), while maybe true, was not, in my view, a credible explanation for his nervousness. Brewer often rambled on when responding to questions put to him, and at times seemed too eager to provide information not requested of him. Brewer was also evasive when asked about the contents of a warning, and admitted to the assertions made therein only when presented with the warning itself (Tr. 174–175). In short, his testimony simply was not believable, particularly his denial at being angry with Respondent for firing him. In fact, his testimonial demeanor was that of a person who was not merely hurt by what had occurred to him, as he suggests, but rather quite upset at having been terminated. My observation of his comportment as a witness leads me to believe that Brewer was not being truthful and may have fabricated the above accounts as a way of getting back at Respondent. Accordingly, I reject Brewer's testimony and find that Bitter and Krog never made the remarks attributed to them by Brewer, and which are alleged in the complaint as violative of Section 8(a)(1). I shall therefore recommend that complaint paragraphs 5(A)–5(C), and their respective subparts, be dismissed. Complaint paragraph 5(E) alleges that McLaughlin unlawfully interrogated Brewer about his union activities during the March 13 meeting. While McLaughlin, as noted, did not testify, leaving Brewer's testimony in this regard unrefuted, Brewer's testimony regarding this alleged interrogation was simply not credible, particularly in light of his deliberate attempt to provide only what he deemed to be relevant about that conversation. Accordingly, this allegation shall also be dismissed.

Regarding the bulletin board issue, there is no disputing that Brewer posted the letter for all employees and that it was subsequently removed by McLaughlin, as admitted to by Bitter. Contradicting Brewer, Bitter testified that all postings regardless of subject matter are routinely removed from the bulletin board on a daily basis. While testifying that Brewer's letter had been posted for a day when it was taken down, Bitter did admit that he first saw the letter on the bulletin board when he arrived for work at 7 a.m. on the day it was removed, presumably March 12, and that by 9 or 10 a.m., Brewer's notice along with all other notices which had been there since the day before, was removed in keeping with what Bitter claims is Respondent's stated practice. He further admits having asked a group of employees if anyone wanted the anonymous letter back, explaining he did so because he was not sure if the person who posted letter wanted it back or whether it should be discarded.

The General Counsel, as noted, contends that the removal of the Brewer letter from the bulletin board was unlawful. I do not agree. First, Brewer's testimony that his letter was removed within one-half hour of being posted, while other literature, including Respondent's own anti union propaganda, was allowed to remain is contradicted by Bitter, who, as noted, testified that all such postings are removed on a daily basis. As previously found, Brewer was not a credible witness. As such, I do not credit his testimony. Rather, I find, in agreement with Bitter, that the Respondent's practice is to remove all postings, regardless of their origin or content, from the bulletin board on a daily basis, and that this particular practice was followed on March 12 when, according to Bitter, all postings, including Brewer's letter, were removed from the bulletin board around 9 or 10 a.m. that day.

The General Counsel suggests that Bitter's assertion that he first noticed the Brewer letter posted on the board at 7 a.m. on March 12, supports Brewer's claim that the letter was posted on the morning of March 12, and had not been posted 1 full day, as further claimed by Bitter. The General Counsel, in my view, reads too much into Bitter's testimony, for the fact that Bitter first noticed Brewer's letter on the bulletin board on the morning of March 12, does not establish that the letter was in fact posted that morning, for it might very well have been posted on March 11, and not, as claimed by Brewer, on March 12, even though Bitter first saw it that same morning. Although Bitter did testify that the letter had been on the board for 1 day, he was never asked to explain how he knew this (Tr. 221). While at first blush Bitter's testimony in this regard appears to be at odds with his claim of having first noticed Brewer's letter on the morning of March 12, Bitter could very well have been informed of its posting the day before but never noticed it until March 12. The plain fact is that he was never asked to explain how he knew when Brewer's letter was posted and the only evidence contradicting Bitter in this regard is Brewer's discredited claim that he posted the notice on the morning of March 12. I note that Brewer's own testimony as to his preparation and posting of the letter was hardly a picture of clarity. Asked, for example, when he first typed the letter, Brewer replied that he believes it was "put up the first or second week of March," adding that he is "almost positive that it was put up right before I was fired." (Tr. 150–151.) When reminded that the question put to him was when the letter had been "typed" and not when it was "put up," Brewer replied that he had typed up the letter "the night before." He did not, however, explain what he meant by "the night before." Thus, it is not clear if he was referring to "the night before" he was discharged or "the night before" he posted the letter. Only when asked by the General Counsel, in a somewhat leading fashion, if he had "posted this letter on about March 12th" did Brewer reply that he had. In sum, I do not believe Brewer's testimony as to when he first posted the letter or his claim that other items were left on the bulletin board for more than 1 day. Accordingly, I find that the Respondent did not act unlawfully when it removed Brewer's letter from the bulletin board on March 12, as alleged in complaint paragraph 5(D), and shall consequently, recommend dismissal of this allegation.[16]

[16] The General Counsel on brief argues that Bitter's attempt to ascertain who the letter belonged to amounted to an unlawful interrogation (GC Exh. 17). Bitter's conduct in this regard was not alleged as a separate violation in the complaint, and the General Counsel at the conclusion of the hearing did not ask to have the pleadings conform to the proof. Accordingly, I make no finding on whether Bitter's inquiry constituted unlawful conduct under the Act.

b. The impression of surveillance allegation

The complaint further alleges, at paragraph 5(F), and the General Counsel contends, that the Respondent created an unlawful impression of surveillance when Gunn told Hollowood she had been seen soliciting employee signatures in the hospital's outpatient recovery area. I find merit in the allegation.

The test for determining whether an employer has created an impression of surveillance is whether the employee would reasonably assume from the statement in question that his or her activities had been placed under surveillance. *United Charter Service*, 306 NLRB 150 (1992). From her credited version of that March 19 meeting, I am convinced that Hollowood could reasonably have believed from Gunn's remarks that the Respondent was keeping a watch on her union activities. Thus, Hollowood's credited account of that meeting makes clear that Gunn did not merely inquire into whether Hollowood had been soliciting in a patient care area but rather accused her of doing so, without first investigating whether or not the information she had received was true. The information, as it turned out, was not accurate, a fact that could have easily been ascertained by Gunn through simple investigation. Gunn's apparent failure to acknowledge one way or the other Hollowood's belief that Buschold was in all likelihood the one responsible for the false report could reasonably have led Hollowood to believe that the Respondent might have been utilizing Buschold and/or other employees to report on her union activities around the Hospital. Such conduct is clearly coercive. The fact that Hollowood was open about her activities and made no effort to conceal them, or that she was a known union supporter and activist, would not have rendered Gunn's conduct or remarks any less coercive. *Simmons Industries*, 321 NLRB 228, 234 (1996); *Tupo Wholesale Dairy*, 320 NLRB 896, 903 (1996). Accordingly, I find that the Respondent created an unlawful impression of surveillance, and thereby violated Section 8(a)(1) of the Act, when Gunn falsely accused Hollowood soliciting in the Hospital's outpatient care area.

2. The 8(a)(3) and (1) allegations

a. Hollowood's discharge

The complaint, as noted, also alleges that Hollowood was unlawfully discharged for her union and other protected concerted activities. Specifically, the General Counsel contends that Hollowood was discharged because of her activities on behalf of Local 161, and for her appearance at, and remarks made during, the June 1 television interview. The Respondent denies that Hollowood was terminated either for her union activities or specifically for her June 1 remarks. Rather, it contends that Hollowood was lawfully terminated because her comments created such "an atmosphere of distrust and enmity" between her and other hospital staff members and physicians that they "refused to work" with Hollowood, rendering her "unemployable" (R. Exh. 42). The Respondent further contends that Hollowood's conduct and statements were not, in any event, protected by Section 7 of the Act because she acted purely out of self-interest, and not for the mutual aid and protection of other employees. Finally, it argues that any protection her comments may have enjoyed under Section 7 was nevertheless lost by virtue of the false and disparaging nature of her remarks. The Respondent's contentions are without merit.

Under Section 7 of the Act, employees have the right to engage in "concerted" activities for their "mutual aid or protection," and an employer violates the Act if it interferes with, restrains, or coerces employees in the exercise of that right. Among the activities protected by Section 7 is the right of employees to communicate their concerns to the public, provided that the communication is part of, and related to, an ongoing labor dispute.[17] *Hacienda de Salud-Espanola*, 317 NLRB 962, 966 (1995); *Cordin Transport*, 296 NLRB 237, 243 (1989); *Reef Industries*, 300 NLRB 956, 959 (1990), enfd. 952 F.2d 830 (5th Cir. 1991). The protection afforded such communications includes, as here, employee communication with television reporters. *Community Hospital of Roanoke Valley,* 220 NLRB 217 (1975), enfd. 538 F.2d 607 (4th Cir. 1976).

Hollowood's June 1 television appearance and remarks were clearly concerted as well as protected. Initially, Hollowood's June 1 conduct and remarks cannot be viewed in a vacuum but must be considered in light of the events which led up to the interview. *Emarco, Inc.*, supra at 834. As shown by the above factual recitation, prior to appearing on the June 1 interview, Hollowood and other RNFAs were engaged in an ongoing labor dispute with Respondent over its August 1997, decision to switch the RNFA work schedule from a 24-hour to a 12-hour work shift. The RNFAs, as noted, opposed the change believing it would adversely affect not only the quality of patient care but also their own working conditions. Their concerns in this regard were first publicly expressed in the August 20, 1997 open letter to the Hospital's obstetricians, then formally brought to Respondent's attention in the February 9, 1998 letter to hospital administrators and discussed in a subsequent meeting between administrators and RNFAs, including Hollowood. Hollowood testified, credibly and without contradiction, that it was Respondent's failure to address these very concerns which prompted "a couple of us" to publicly air their grievances at the June 1 television interview (Tr. 115).

Thus, it is patently clear that the June 1 interview, along with the remarks made and views expressed therein by Hollowood, O'Neil, as well as Gearhart, was simply part and parcel, and a continuation, of this long-running labor dispute between the RNFAs and the Respondent regarding their shift schedule change. Thus, as she and others had been doing for almost ten months prior to the interview, Hollowood at the interview voiced concern that the change from a 24-hour to a 12-hour shift would adversely affect patient care and employee working conditions at the Hospital, and was clearly speaking not just for herself but for all other RNFA and nursing personnel who were or had been impacted by the change. Hollowood's June 1 conduct and comments were therefore protected by Section 7 of the Act as they clearly were part of and related to a labor dispute as defined by Section 2(9) of the Act.

That Hollowood may have been acting out of some self-interest does not, as claimed by the Respondent, deprive her conduct of the Act's protection, for "the motives of an employee who takes an action related to working conditions is irrelevant in determining whether the action is protected." *NLRB v. Parr Lance Ambulance*, 723 F.2d 575, 578 (7th Cir. 1983), citing to *Dreis & Krump Mfg. Co. v. NLRB*, 544 F.2d 320, 328 at fn. 10 (7th Cir. 1976). See also *Mike Yurosek & Son, Inc.*, 310 NLRB 831, 832 (1993) ("How an employee subjectively characterizes his or her own actions is not determinative . . . of whether that employee has engaged in

[17] A "labor dispute" under Sec. 9 includes any controversy concerning employee terms and conditions of employment. See, e.g., *Emarco, Inc.*, 284 NLRB 832, 833 (1987).

native . . . of whether that employee has engaged in protected, concerted activity."). While it may be true that Hollowood hoped to achieve some personal gain by joining with other RNFAs to protest Respondent's shift change, it is not all that uncommon for employees who engage in concerted action to have some personal goals in mind, for employees often engage in such conduct as a means of obtaining improvements in their own individual working conditions that might not be gotten were they to act alone. Indeed, that is the underlying premise of concerted activity, to wit, to achieve some form of personal gain at the workplace, such as an increase in wages, benefits, etc., through the power of collective action. To this extent, therefore, employees who participate in group action are not only seeking a general improvement in the lot of their fellow employees, but are, to a certain degree, also acting out of self-interest. Here, Hollowood was clearly acting in concert with other RNFA and with O'Neil and Dr. Gearhart when she appeared at the June 1 interview to discuss and express her opposition to Respondent's shift change. Her actions and words, made in furtherance of an ongoing labor dispute, therefore remained protected regardless of whatever else may have motivated Hollowood to act.

Nor do I agree with the Respondent that Hollowood's June 1 remarks were "maliciously false" and "disparaging" and therefore not entitled to the Act's protection. It is well settled that the mere falsity of a communication does necessarily deprive it of its protected character. Rather, only those communications that are not related to an ongoing labor dispute and which are disloyal, recklessly made, or maliciously false are deemed to fall outside the Act's protection. See, e.g., *Cordin Transport,* supra, also *Diamond Walnut Growers*, 316 NLRB 36, 47 (1995); *Kinder-Care Learning Centers*, 299 NLRB 1171 (1990); *Cincinnati Suburban Press*, 289 NLRB 966, 967 (1988); *Emarco, Inc.*, 284 NLRB 832, 833 (1987); and *Mitchell Manuals*, 280 NLRB 230, 231 (1986).

As discussed above, Hollowood's June 1 remarks were intended to draw public attention to Respondent's failure to address the RNFA concerns regarding the effects the shift change was having on patient care and employee working conditions, and were therefore part of an ongoing labor dispute between the RNFAs and the Hospital. Regarding the truthfulness of Hollowood's remarks, certain evidence of record, more particularly the December 17, 1997 letter which Gunn sent to Hollowood inquiring of her interest in a full- or part-time transfer to a 12-hour night shift, and Gunn's own testimony, appears to corroborate at least some of the assertions made by Hollowood during the interview. Hollowood's June 1 claim, for example, that 3 years earlier the Respondent had maintained a staff of three RNFAs per 24-hour shift, which it subsequently reduced to two, and then to one RNFA per 24-hour shift on switching from a 24-hour to a 12-hour shift schedule, was not false as in her December 17, 1997 letter Gunn appears to have made this very point when she mentioned to Hollowood that Respondent intended to "begin staffing the scrub team on 24-hour shifts with one (1) person on duty instead of two (2) commencing Sunday, January 18, 1998." Further, Respondent's assertion on brief that the Respondent currently mans the C-section unit with "one RNFA," one scrub technician, and one circulatory nurse also serves to corroborate Hollowood's June 1 assertion that only one RNFA would be used on the 24-hour shift schedule (R. Exh. 33). Thus, it cannot be said that Hollowood's comment about the number of RNFAs having been reduced from three to one on a 24-hour shift was untruthful.

Nor do I find Hollowood's further remark about emergencies in the L&D unit happening "not one at a time but possibly two at a time" to have been palpably false. First, it should be noted that Hollowood prefaced her remarks with the words, "because as we said before, Dr. Gearhart said . . ." suggesting that Hollowood was simply making reference to something Gearhart might have said to her on the subject. If Gearhart was indeed the source of her information,[18] as appears to be the case, then her remarks, if untrue, would clearly have been based on a mistaken belief as to their accuracy, and can hardly be viewed as a maliciously false statement.[19]

I also do not agree with Respondent's claim on brief that Hollowood made false statements about, and disparaged the qualifications of, the RNFA replacements by claiming that that she was certain the replacements would not have her qualifications (R. Exh. 34). First, the actual remark about Hollowood believing she had greater qualifications was expressed not by Hollowood, but rather by the reporter, although the latter in her remark does suggest that this sentiment may have been expressed to her by Hollowood. While Hollowood testified that she in fact believed herself to be more qualified than the replacements, she did not recall having made such a remark to the reporter, and testified only that while she could have made the remark, it could just as well have been made by Dr. Pearce or O'Neil, the other interview participants. The Respondent, as noted, never questioned Hollowood about the remarks made by

[18] The Respondent at the hearing was of the view, one with which I am inclined to agree, that the transcript of the June 1 interview received in evidence as GC Exh. 8 does not reflect the entire interview conducted by the reporter of Hollowood, O'Neil, and Dr. Gearhart (Tr. 77). Hollowood's reference to statements made by Dr. Gearhart which were not aired during the news broadcast, and which consequently do not appear in GC Exh. 8 tends to support Respondent's position.

[19] Nor is it clear from Hollowood's remarks what type of "emergencies" she was referring to when she commented that such emergencies could "possibly" occur "two at a time." The Respondent assumes that Hollowood was making reference to emergency unscheduled C-section operations that would have to be performed while other C-sections that had been scheduled were in progress. However, it is quite possible that Hollowood could have been referring to "emergencies" in a more generic sense, and not just to the performance of unscheduled C-section operations. Relying on its assumption that Hollowood was referring to emergency unscheduled C-section operations, the Respondent points to Gunn's testimony, that there has never been "a need for two emergency C-sections while one was already scheduled," and to Hollowood's testimony that the Respondent has not had "three C-sections at the same time," as proof that Hollowood's statement about two "emergencies" occurring at the same time was untrue (R Exh. 31–32; Tr. 237, 100). Contrary to Respondent, I decline to speculate as what Hollowood may have meant by her "emergencies" remark for she was never asked to explain her remarks at the hearing, nor for that matter given an opportunity to do so prior to being fired. Regarding her admission that there have not been three C-sections at the same time at the Hospital, Hollowood was simply responding to a question by Respondent's counsel on whether she "ever had a situation where there were three [C-sections] being performed at the same time," and not, in my view, attempting to explain the meaning of her remark, as that question was never put to her. It is quite possible therefore that while the Respondent may have never had two nonscheduled emergency C-sections at one time, other types of emergencies might have occurred with greater frequency. If so, then Hollowood's claim would not have been false. In short, the Respondent has not shown that Hollowood's remark regarding "emergencies" were maliciously false.

her at the interview before firing her, and thus could not have known if the reporter had accurately quoted Hollowood or made a mistake.

But even if I were to believe that Hollowood indeed made the comment which the reporter seems to attribute to her, the remark reflected nothing more than Hollowood's own personal belief that she was better qualified than her replacements to be a RNFA in the Hospital's L&D unit. Indeed, it does not appear that Hollowood was too far off the mark in this regard, for Gunn readily admitted that the change from a 24- to a 12-hour shift, and subsequent replacement of existing RNFA with trained replacements in the L&D unit, did result in an overall reduction in the skills and experience of RNFA (Tr. 264). Gunn's further testimony that the Respondent had to institute a training program to train individuals to perform the work that was being done by Hollowood and other RNFA, because it was having difficulty recruiting qualified individuals for the position, also lends credence to Hollowood's belief that she was better qualified than the replacements to perform RNFA duties in the Hospital's L&D unit. Unlike the replacements, Hollowood, with 8 years experience as a RNFA in that unit, needed no training to perform her duties and could therefore reasonably be viewed as being more qualified than the replacements to perform such duties. Accordingly, it cannot be said that the remarks attributed to Hollowood by the reporter were palpably false or disparaging.

In sum, I find that Hollowood's June 21 remarks were neither false, misleading, or disparaging. However, even if some aspect of her remarks could be viewed as not wholly accurate, I would nevertheless find them to be protected by Section 7 as the Respondent has not shown that Hollowood's remarks were deliberately or maliciously false. The fact that Respondent characterizes it as such does not make it so, as its subjective views in this regard cannot substitute for affirmative evidence of malice. *Cincinnati Suburban Press*, supra. The Respondent, who bears the burden of establishing that the remarks were maliciously made, has, in my view, not done so here. *Bituma Corp.*, 314 NLRB 36, 44 (1994). Accordingly, Hollowood's June 1 remarks, as previously found, remained protected by Section 7 of the Act.

Having found that Hollowood was engaged in protected concerted activity when she appeared at the June 1 interview and made her remarks, the question remaining is whether she was unlawfully discharged for making such remarks and for her union activities. The evidence supports a finding that she was discharged for such activities.

As an initial matter, I find that the General Counsel has, as required by the Board's holding in *Wright Line*, 251 NLRB 1083 (1980),[20] made a prima facie showing that Hollowood's activities on behalf of Local 161, as well as her above-described protected June 1 conduct, were the motivating factors behind her discharge. Hollowood, as noted, was an open and active Local 161 supporter, having solicited some 42-employee signatures on Local 161 support petitions, attended their meetings, distributed literature in nonpatient care areas of the Hospital, and served as part of the core group, Local 161's in-house organizing committee. The Respondent, as noted, concedes knowing of her activities. Finally, Respondent's unlawful attempt to convince Hollowood that her union activities were being kept under surveillance convinces me that the Respondent was not too happy with her activities on behalf of Local 161, and may have harbored some animosity towards her. Accordingly, I find that the General Counsel made out a prima facie case under *Wright Line*, and that the Respondent, as called for under *Wright Line*, now bears the burden of showing by a preponderance of credible evidence that it would have discharged Hollowood even if she had not engaged in any protected conduct. The Respondent, in my view, has not met its burden in this regard.

I do not, for example, believe Respondent's persistent claim at the hearing and on brief that it received such a large number of complaints from employees and physicians refusing to work with Hollowood that it became virtually impossible to reschedule her for work, thus rendering her "unemployable" and thereby compelling her discharge (Tr. 16, 282; R. Exh. 42). In this regard, I find significant that the two management officials responsible for the discharge, Tucker and Wagner, at most identified only four physicians (Wagner named Pearce and Leidenfrost, and Tucker naming the same two plus Krajcovic and Ramas) as having purportedly stated that they would no longer work with with Hollowood. While I have, as noted, found them not to be credible, it bears noting that even if I were to believe that these four physicians in fact complained to Wagner and Tucker about Hollowood, their complaints hardly come close to approximating the tidal wave of opposition to Hollowood's June 1 remarks being depicted by the Respondent.

There were, to be sure, other Respondent witnesses, e.g., Gunn, Geldbach, and Browning, who claimed to have received similar complaints from physicians and staff nurses. However, Gunn, as previously discussed, was not certain if she had received any complaints from physicians, and testified only that "perhaps one" physician, whom she did not identify, might have expressed some problem about working with Hollowood. While she claims to have heard some criticism from staff nurses about the comments made by Hollowood during the June 1 interview, she never claimed to have heard staff nurses expressing a refusal to continue working with Hollowood. Geldbach, as noted, testified only to having heard three physicians and three nurses complain about the remarks made not just by Hollowood, but also by O'Neil and Gearhart, but never testified that any of these six expressed an unwillingness to work with Hollowood. Browning offered similar testimony, for while claiming that the entire obstetrical and surgical teams expressed amazement at, and felt insulted by, Hollowood's remarks, she never claimed to have heard any physician or staff nurse state they would not work with Hollowood. Browning, like Gunn, did not identify by name which physicians she had

[20] Enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Under *Wright Line*, the General Counsel bears an initial burden of presenting sufficient evidence to support an inference that an employer's decision to discharge or otherwise discipline an employee was motivated by the employee's union or other protected concerted activity. Once such a showing is made, the burden shifts to the employer to demonstrate that the same action would have been taken even without regard to any union or other protected concerted activity the employee may have engaged in. The employer does not meet its burden simply by presenting a letigimate reason for its actions, but rather must persuade by a preponderance of credible evidence that the same action would have been taken even in the absence of protected conduct. However, where an employer's reason for its actions are found to be pretextual, that is the reason either does not exist or was in fact not relied upon, then the employer will not have met its *Wright Line* burden, and the inquiry is logically at an end. *Berg Product Design*, 317 NLRB 92, 95 (1995).

heard expressing such complaints. Nor is there any evidence to suggest that these alleged complaints were ever passed on to Tucker or Wagner. In sum, the above testimony by Gunn, Geldbach, and Browning provides no support for Respondent's claim that there was such a groundswell of opposition by physicians and nurses alike to working with Hollowood in particular because of her June 1 remarks that it was forced to discharge her.

Further, the views expressed by Hollowood during the June 1 interview regarding patient care, safety, and staffing issues stemming from a 24-hour to a 12-hour shift, which the Respondent contends triggered the avalanche of complaints against Hollowood from angry physicians who viewed her comments as offensive and disparaging, were no different from the comments expressed by Hollowood and other RNFAs in the August 20, 1997 letter to all of the hospital's obstetrecians. Yet, the August 20, 1997 letter caused no similar uproar by obstetricians or any other physicians. In fact, the converse appears to have occurred for, as noted, at least 13 physicians threw their support behind Hollowood's and the RNFAs "efforts to refocus patient care back to optimal staffing conditions" and to "promote quality working conditions to insure safe patient care" by organizing themselves (GC Exh. 6). The only distinguishing feature between the comments contained in the August 20, 1997 letter to hospital obstetricians, and the remarks made by Hollowood during the June 1 interview, is the manner by which the message was conveyed, with the former comments appearing in a public letter to hospital obstetricians, and the latter addressed to the public at large via a television newscast. The apparent lack of opposition by physicians to the comments contained to the August 20, 1997 letter, leads me to doubt that the same or similar-type comments made months later by Hollowood during the June 1 interview would have caused the onslaught of complaints which the Respondent claims occurred following the June 1 telecast. To the extent such complaints occurred, which I doubt, I am convinced they resulted not from any particular comments Hollowood may have made, but rather from Hollowood's decision to publicly air the RNFAs dispute with Respondent.

In sum, I find little, if any, credible evidence to substantiate the Respondent's claim that large numbers of physicians and employees refused to work with Hollowood because of her June 1 remarks. There is, in this regard, no indication that the Respondent ever bothered to inquire if the views expressed by Hollowood during the June 1 interview enjoyed support among members of the nursing staff or other physicians. Had it done so, I am inclined to believe it would have found such support. In this regard, it is more likely than not that those nurses who were solicited by Hollowood and who expressed an interest in being represented by Local 161 would have approved of Hollowood's comments, as would the 13 physicians (one of whom was Gearhart) who expressed their support for Hollowood's and the RNFAs organizational efforts in their April 1998 letter (GC Exh. 6). The Respondent's failure to make any such inquiry leads me to believe that it was intent on discharging Hollowood for June 1 television appearance and comments, regardless of whatever support she may have enjoyed. Indeed, I am convinced that it was Respondent's fear of such support for Hollowood that led to the decision to discharge her, and that its claim of having received large numbers of complaints regarding Hollowood, a claim which as noted has not been established, is nothing more than a pretext concocted by Respondent to justify the discharge.[21] When an employer's explanation for its decision to discharge an employee is found to be false or, as noted, pretextual, an inference is warranted that the true reason is one which the employer seeks to conceal. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1960); *Berg Products Design*, supra. Here, the only other possible explanation for having discharged Hollowood is because of her activities on behalf of Local 161, and because of her appearance on the June 1 newscast, conduct which, as previously found, was protected by Section 7 of the Act.[22]

There is yet other evidence pointing to an unlawful discriminatory motive for the discharge. The record reflects that problems often occurred between physicians, nurses, and employees, including situations where nurses and physicians have difficulty working together, and that Respondent's practice in such cases is to try to get the parties to mutually resolve their differences or to accommodate the working schedules if the parties are unable to agree. However, even when no accommodation can be reached, the parties are nevertheless expected to work together. So testified Wagner and Gunn (Tr. 42, 267). The Respondent does not deny the existence of such a practice. Wagner and Tucker admitted that no employee has ever been disciplined or discharged because of a physician's refusal to work with that individual (Tr. 40, 292). The Respondent, however, failed to adhere to this past practice in dealing with Hollowood for, rather than trying to resolve whatever differences Leidenfrost, Krajcovic, or Pearse may have had with Hollowood or attempting to reach some other reasonable accommodation, it summarily dismissed Hollowood, a 20-year employee, without any prior warning. The Respondent's failure to follow its past practice, or to offer a credible explanation for treating Hollowood differently from the way other employees were treated under similar circumstances, provides strong evidence of a discriminatory motive, *Sunbelt Enterprises*, 295 NLRB 1153 (1987), a finding rendered even more compelling by the fact that no employee had ever before been terminated for having a difficult working relationship with other staff members or physicians.

In addition to treating Hollowood disparately vis-à-vis past employees, Hollowood was also accorded harsher treatment in comparison to O'Neil, who received no punishment whatsoever for the comments he made, and Gearhart, who was allowed 30 days in which to correct his certain behavior and discharged only after he failed to do so (Tr. 288). Hollowood, as noted, was afforded no such opportunity but was instead summarily dismissed without any prior warning or opportunity to rectify any perceived misconduct. The Respondent did not explain

[21] Indeed, Tucker's admission that he solicited a letter of complaint from Krajcovic raises a suspicion that he did so in order to build a case against Hollowood. His conduct in this regard raises a further suspicion that the Leidenfrost letter, which Tucker claims mysteriously appeared on his desk one morning, may also have been solicited by Tucker. As to the Pearse letter, the Respondent, as noted, offered no explanation regarding its acquisition. As previously indicated, any doubts in this regard could have been resolved by Respondent by calling these individuals to corroborate the letters and the circumstances surrounding their preparation.

[22] The fact that O'Neil, also a longtime union activist, was not discharged along with Hollowood does not negate a finding that Hollowood was singled out for discriminatory treatment, for it is settled that "an employer's discriminatory motive is not disproved by evidence showing that it did not weed out all union adherents." *Sawyer of Napa*, 300 NLRB 131, 152 at fn. 46 (1990), and cases cited therein.

why Gearhart, but not Hollowood, was afforded such an opportunity.[23] Tucker did explain that O'Neil was not discharged because his remarks, unlike Hollowood's, were not disparaging but rather dealt with the "unionization of employees," a subject he disagreed with but nevertheless believed O'Neil had a right to express. The explanation, however, lacks merit for, as found above, Hollowood's remarks, like O'Neil's, were neither false nor disparaging, rendering specious Respondent's explanation for drawing such a distinction between the two.[24] Significantly, Tucker's further assertion, that it was the alleged disparaging nature of Hollowood's remarks which led it to treat Hollowood differently from O'Neil, clearly supports the General Counsel's position, and my finding herein, that Hollowood was discharged not because of the alleged numerous complaints the Respondent claims Tucker and Wagner received regarding Hollowood, a claim which, as noted, I find to be unsupported by the credible evidence of record, but rather, as stated, for going public about the RNFAs labor dispute with Respondent, and because the latter wrongly viewed her remarks as disparaging. For all of the above-stated reasons, I find that the Respondent has failed to rebut the General Counsel's prima facie case and, consequently, further find that its discharge of Hollowood on June 5, violated Section 8(a)(3) and (1) of the Act as it was unlawfully motivated by her Union other protected concerted activities.

[23] Ironically, comments made by Gearhart and aired during the June 2 telecast could reasonably be viewed as being more offensive than anything Hollowood may have said during the interview. Thus, in his remarks, set forth in GC Exh. 10, Gearhart accuses the Hospital of using people with "a minimal of training," identifying those people as former janitorial staff employees who are now being used to admit patients, draw blood, and take over nursing functions, and commenting that "[w]e've seen some real disasters with that." Clearly, it would appear that Gearhart was criticizing the credentials and qualifications of some staff employees, just as Hollowood purportedly had done and which, according to Respondent, was what led to her discharge. Yet, Gearhart was allowed to stay on for 30 days in the hopes he would make amends. Hollowood was not.

[24] Several factors seem to undermine the Respondent's explanation for sparing O'Neil but not Hollowood. Thus, in its June 7 telephone hotline message to employees, Tucker makes clear that he was "personally insulted and offended" by what "both nurses and doctors," e.g., Hollowood, O'Neil, and Gearhart, had said during the interview (GC Exh. 12). He drew no distinction between Hollowood's and O'Neil's remarks, labeling both as "an insult not only to St. Luke's, but to all of us who work hard everyday to provide top notch care for our patients." In his telephonic message, Tucker does not link O'Neil's June 1 remarks to simply union organizational rhetoric, as he did at the hearing. Further, Geldbach's testimony, as noted, reveals that the complaints she received from physicians and nurses alike related to the conduct of all three individuals who took part in the interview, and was not limited to Hollowood. Finally, the Respondent, as noted, claims that Hollowood's discharge was prompted by the refusal of physicians, including Leidenfrost, to work with her. However, according to the Leidenfrost letter, Leidenfrost purportedly objected to working with two of the employees, presumably Hollowood and O'Neil, who took part in the interview. Despite Liedenfrost's purported refusal to work with either Hollowood or O'Neil, the Respondent took action only against Hollowood. Incredibly, Tucker's only explanation for not discharging O'Neil was because Leidenfrost had not seen the telecast! (Tr. 290.) Yet, that very fact was not an obstacle to Tucker's discharge of Hollowood. These inconsistencies render untenable Tucker's explanation for why it chose to discharge Hollowood and retain O'Neil.

The Objections

Following the election in Case 14–RC–11921, Local 108 timely filed 15 objections to the election alleging that the Respondent-Employer had engaged in conduct which interfered with the employees' free choice in the election requiring that the election be set aside and that the Respondent be required to bargain with the Union or that a new election be held (see attachment to GC Exh. 1[g]). Local 108 subsequently withdrew Objections 1, 2, 5–7, and 9. The remaining objections, as noted, were consolidated for hearing in this matter as they parallel the unfair labor practice allegations contained in complaint paragraph 5, subparts A through E. Having found no merit to the allegations contained paragraph 5 and its subparts, I further find that remaining Objections 3,4, 8, 10, 11, and 13–15, also lack merit and shall accordingly recommend that they be overruled.

CONCLUSIONS OF LAW

1. The Respondent, St. Luke's Episcopal-Presbyterian Hospitals, Inc., is an employer within the meaning of Section 2(6) and (7) of the Act.

2. Locals 108 and 161 of the Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union are labor organizations within the meaning of Section 2(5) of the Act.

3. By falsely accusing Carol Hollowood of soliciting employee signatures on union petitions, the Respondent unlawfully created the impression it was keeping her union activities under surveillance, and has thereby violated Section 8(a)(1) of the Act.

4. By discharging employee Carol Hollowood for engaging in union and other protected activity, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(3) and (1) of the Act.

5. The above-described unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. Except for the above-described unfair labor practices, the Respondent has not violated the Act in any other way.

7. The Respondent has not engaged in any of the conduct alleged as objectionable in Case 14–RC–11921.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy its unlawful discharge of employee Carol Hollowood, the Respondent shall be required, within 14 days from the date of the Order in this case, to offer her immediate and full reinstatement to her former job or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed. The Respondent will also be required to make Carol Hollowood whole for any loss of earnings and other benefits she may have suffered due to her unlawful discharge as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest on such amounts to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be directed to remove from its files, within 14 days from the date of the Order, any reference to Carol Hollowood's unlawful discharge, and to notify Carol Hollowood

within 3 days thereafter, in writing, that it has done so and that the discharge will not be used against her in any way. Finally, the Respondent will be required to post an appropriate notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[25]

ORDER

The Respondent, St. Luke's Episcopal-Presbyterian Hospitals, Inc., Chesterfield, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist

(a) From discharging employee Carol Hollowood, or any other employee, for engaging in union or other protected concerted activity.

(b) Creating the impression it is keeping Carol Hollowood's or any other employee's union or protected concerted activities under surveillance.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Carol Hollowood immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Carol Hollowood whole for any loss of wages and benefits she may have suffered as a result of the discrimination against her in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of the Order, remove from its files any reference to Carol Hollowood's unlawful discharge and, within three days thereafter, notify her in writing that it has done so and that the discharge will not be used against in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of records if stored in electronic form,[26] necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Chesterfield, Missouri, copies of the attached notice marked "Appendix."[27] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to [employees] [members] [employees and members] are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 5, 1998.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found, and that Case 14–RC–11921 be severed from this proceeding and remanded to the Regional Director for the issuance of an appropriate certification.

[25] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[26] See, *Bryant & Stratton Business Institute*, 327 NLRB 1135 (1999).

[27] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."